

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1412 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANBI HARJI DEVSHI

Versus

KANBI PREMJI DEVSHI - DECEASED THRO' HIS HEIRS

Appearance:

MR AVINASH K MANKAD for Petitioner

MR CH VORA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/12/96

ORAL JUDGEMENT

1. The petitioner filed this petition in which the challenge has been made to the order of the Gujarat Revenue Tribunal, annexure 'A' dated 4th November, 1982 under which the Tribunal has affirmed the judgment of the Dy.Collector, Bhuj dated 30th June, 1982 dismissing the appeal of the petitioner filed against the judgment and order of the Special Mamlatdar, Bhuj dated 29th March, 1982.

2. The short facts of the case are that the respondent Kanbi Premji Devshi has filed a civil suit in the court of Civil Judge (S.D.) Bhuj for the possession and for permanent injunction to restrain the present petitioner from disturbing his possession of the land comprised in Survey No.238 of Village Dahisara at Bhuj Taluka of Kutch District. In the suit, the issues were framed by the civil court, and issue no.10 is whether the defendant i.e. the petitioner herein, is the tenant of the suit-wadi. As this issue is required to be decided by the Mamlatdar under sec.125 read with sec.100 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, the civil court has sent the matter to the Revenue court. The Special Mamlatdar, Bhuj registered the said case as Tenancy case no.59/78 and under its order dated 31st July, 1981 held that the petitioner is not the tenant of the suit land. Being dissatisfied with the said order of the Special Mamlatdar, the petitioner filed appeal to the Deputy Collector, Bhuj being Tenancy Appeal No.8/81. The appellate authority under its order dated 30th January, 1982 remanded the matter back to the Special Mamlatdar with the direction to decide whether the petitioner was lawfully cultivating the suit land or not. The remanded matter has been decided by the Special Mamlatdar on 29th March, 1982 and it has been held that the petitioner is not the tenant of the suit land. That decision has been challenged by the petitioner by filing Tenancy appeal no.7/82 before the Dy. Collector, Bhuj which came to be dismissed on 30th June, 1982. The petitioner was not satisfied with the order of the appellate authority also and as such, he has taken up the matter in the revision before the Gujarat Revenue Tribunal being the Tenancy appeal No.TEN.B.K. No.40/82. The revision application has also been dismissed under the order dated 4th November, 1982. Hence this Special Civil Application.

3. The learned counsel for the petitioner Shri Avinash K. Mankad contended that all the three courts below have committed serious illegality in holding that the petitioner was not the tenant of the suit land. It has next been contended that Gujarat Revenue Tribunal though held all the points in favour of the petitioner, but taking the somersault it has decided that the petitioner being the owner of the land in question, he cannot claim any tenancy right thereon. The Tribunal has exercised its jurisdiction in making out the case altogether which was only pleaded by the petitioner in the alternate.

4. On the other hand, the counsel for the respondent contended that the Tribunal has rightly held that the petitioner is the owner of the land in question. As per his claim he cannot claim any tenancy right therein. It was the case of the petitioner himself in the revenue court and on the basis of the admission of the petitioner himself, the matter has been decided and as such, this court may not interfere in the order of the Gujarat Revenue Tribunal sitting under Article 227 of the Constitution of India.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The counsel for the petitioner has passed over to the court, the translation of the relevant paragraph 14 of the written statement given by the petitioner in the suit. In para no.14 of the written statement the petitioner has come up with a case that he is in lawful possession of the suit land-wadi. The suit-wadi was not given for cultivation to the petitioner by the respondent as his agent nor the petitioner has committed any trespass over the same. The petitioner has pleaded that he is given the possession of the suit-wadi by way of oral gift legally and hence he is in lawful possession. The petitioner has further stated that in case this oral gift is not believed then also as the possession has been given to him actually and hence this is perfectly legal and valid form of oral gift. The further case of the petitioner in alternate is that as he is cultivating the land since prior to 1961 he has become the deemed tenant and thus in case if the question arises about his tenancy then such an issue should be framed as a preliminary issue and the suit should be kept pending and the said issue should be referred to the Special Mamlatdar. It is not in dispute that in village form no.7-12 and also village form no.8A, the land in dispute stood in the name of the petitioner as a owner. The Tribunal has noticed further that in the aforesaid two forms, the petitioner is shown to have been cultivating the land in dispute as owner-cultivator. The petitioner has come up with a case that the land in dispute has not been given to him by the respondent as his agent, but the land has been given to him by the respondent under an oral gift. So the petitioner has come up on the basis of oral gift and he is claiming himself to be in possession on the basis of the said gift. In view of his own admission, the petitioner has become the owner of the said land and he is cultivating the said land as owner. In the presence of these facts in the form of admission of the petitioner himself, I do not find any illegality in the finding of the Tribunal that it cannot be said that the petitioner

is cultivating the land in dispute belonging to another person. On the basis of the material which have come on record, the Tribunal has rightly held that the owner of the land cannot claim tenancy over his own land. The petitioner cannot be said to be deemed tenant under sec.6 of the aforesaid Act. It is not the case of the petitioner that he is cultivating the land belonging to another person. It is true that the reasons given by the Special Mamlatdar and the appellate authority to hold that the petitioner is not the deemed tenant are not accepted by the Tribunal, but the Tribunal was within its competence to maintain the order on other grounds available and borne out from the record of the case. In the present case on the basis of the petitioner's own admission the finding has been recorded by the Tribunal that he is not the deemed tenant which finding cannot be said to be perverse on the face of it. The exercise of jurisdiction by this court under Article 227 of the Constitution may not be proper to correct all species of hardship or wrong decisions. The matter has come before the revenue court below under a special legislation governing the landlord and tenant relationship and disputes. Under this Act, no appeal or revision has been provided to this court and the object is to give finality to the decision of the revenue Tribunal. This court sitting under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. The power of this court under Article 227 of the Constitution must be restricted to cases of flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless this court interferes. It is not a case which fall under the aforesaid category. Contrary to it, the decision of the Tribunal is based on the petitioner's own admission made by him in the pleadings.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. The petitioner is directed to pay Rs.1000/- by way of costs of this petition to the respondent.

zgs/-